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to arbitrate. "Compulsory arbitration" is as senseless a phrase as the pseudo medical term "heart failure." Both mean nothing.

But when A. and B. dispute a certain matter and A. finds that B. will concede nothing, that he will not submit the claim to arbitration, and being in possession of the disputed property and physically stronger is able to retain its possession, A. has two remedies. He may, if he is foolish, and undisciplined, and passionate, and revengeful, attempt to take what he considers his own by *force majeure,* or he may, if he is sensible, well balanced and calm, invoke the law and rest assured that justice will be done. If A. should attempt to be his own judge and executioner, if he should destroy B.'s property, and not only the property of B. but that of C. D. and E., innocent persons who have no interest in the quarrel, but who may be caused great inconvenience and suffering by it, the law will quickly punish A., and society will applaud the righteousness of the verdict. Multiply A. and B. a thousandfold, as in the case of a great labor dispute, let A. and B. cause untold misery and suffering not only to themselves but to the community at large, and the law, so prompt and efficacious in revenging the wrongs of society when an individual is the wrongdoer or the sufferer, is veritably stricken with blindness and sits with folded hands impotent, incapable, inefficient. What a travesty on law and all that law means!

MARRIAGE AND DIVORCE PROVISIONS IN THE STATE CONSTITUTIONS OF THE UNITED STATES

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In connection with the agitation both in church and political circles during recent years, and especially in view of the message recently sent to Congress by President Roosevelt, it is pertinent to inquire to what extent the subjects of marriage and divorce have been dealt with in the state constitutions of the United States.

These being among the subjects concerning which the federal constitution is silent, the power of regulating these institutions lies wholly with the states. It might have been expected that subjects so important would have been treated by the states in their most dignified and lasting enacted laws. This, however, is not the case. Their constitutions touch only lightly on these subjects. Generally, when mentioned at all, the burden of regulating marriage and divorce by general laws is delegated to the legislatures. There is, however, in the constitutions themselves, sufficient to give interest to an examination of these provisions.

Marriage being the institution at the basis of our social existence, and the bond from which release is sought in divorce, it first demands our attention. Out of the forty-five state constitutions, only eleven treat the subject of marriage at all. A group of southern states, including Alabama, Florida, Mississippi, North Carolina, South Carolina and Tennessee has practical

uniformity in a provision prohibiting miscegenation, with special reference to marriage between whites and negroes or persons of negro descent. In Alabama, any degree of negro blood is prohibitive. In Florida, persons of "negro descent to the fourth generation, inclusive," may not marry whites. In Mississippi, the prohibition is for persons having "one-eighth or more of negro blood." In North Carolina, for persons "of negro descent to the third generation, inclusive." South Carolina, like Mississippi, specifies persons having "one-eighth or more negro blood." Tennessee designates "persons of mixed blood, descended from a negro to the third generation, inclusive," and prohibits such persons living with whites as husband or wife without marriage.

The subject of plural marriages receives attention in the constitutions of Idaho, Utah and South Carolina. In Idaho, in addition to a general prohibition of bigamy and polygamy, the ordinary rights of citizenship are denied to those upholding such practices. These provisions constitute the most extensive notice of the subject of marriage in any of the constitutions.

"Art. 1, Sec. 4. . . . Bigamy and polygamy are forever prohibited in the state, and the legislature shall provide by law for the punishment of such crimes."

"Art. 6, Sec. 3. No person is permitted to vote, serve as a juror, or hold any civil office . . . who is a bigamist or polygamist, or is living in what is known as a patriarchal, plural or celestial marriage, or in violation of any law of this state, or of the United States, forbidding any such crime; or who, in any manner, teaches, advises, counsels, aids, or encourages any person to enter into bigamy, polygamy, or such patriarchal, plural, or celestial marriage, or to live in violation of any such law, or to commit any such crime; or who is a member of or contributes to the support, aid, or encouragement of any order, organization, association, corporation or society, which teaches, advises, counsels, encourages or aids any person to enter into bigamy, polygamy, or such patriarchal or plural marriage, or which teaches or advises that the laws of this state prescribing rules of civil conduct, are not the supreme law of the state. . . ."

In South Carolina, "Persons convicted of . . . bigamy" are disqualified from being registered or voting. In Utah, where we might expect the subject to be treated at length, there is only the terse statement, ". . . polygamous or plural marriages are forever prohibited," supported by the provision that "An act to punish polygamy and other kindred offenses," approved February 4, 1892, is to remain in force.

In the constitution of California, it is provided that "No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect."

In Massachusetts and New Hampshire, all causes of marriage until such time as the legislature shall have made other provision are to be heard and tried by the "governor and council," and by the "superior court" respectively.

[Sections in state constitutions relating to marriage: Alabama, Art. 4, Sec. 102; California, Art. 20, Sec. 7; Florida, Art. 16, Sec. 24; Idaho, Art. 1, Sec. 4, Art. 6, Sec. 3; Massachusetts, Chap. 3, Art. 5; Mississippi, Art. 14,

Sec. 263; New Hampshire, Art. 75; North Carolina, Art. 14, Sec. 8; South Carolina, Art. 2, Sec. 6, Art. 3, Sec. 33; Tennessee, Art. 11, Sec. 14; Utah, Art. 3, Sec. 1, Art. 24, Sec. 2.]

The subject of divorce has been more generally dealt with than marriage in the constitutions of the states, but with less diversity of treatment. Forty-one of the state constitutions have some mention of divorce. Of these, twenty-five in almost identical terms have the following provision: "The legislature shall not pass local or special laws in any of the following cases; . . . granting divorces . . ." These states are Alabama, Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Oregon, Pennsylvania, South Dakota, Texas, Utah, West Virginia and Wyoming. A provision similar in effect is found in the constitutions of eleven states, namely, Delaware, Iowa, Kansas, Michigan, Minnesota, New Jersey, New York, Ohio, Tennessee, Washington and Wisconsin. The following are samples of these provisions: "No divorce shall be granted, nor alimony allowed, except by the judgment of a court, as shall be prescribed by general and uniform law" (Del.); "No divorce shall be granted by the General Assembly" (Iowa); "All power to grant divorces is vested in the district courts, subject to regulation by law" (Kans.); "The general assembly shall grant no divorce, nor exercise any judicial power not herein expressly conferred" (Ohio).

In Massachusetts and New Hampshire, it is provided that all causes of divorce and alimony shall be heard and tried by the "governor and council," and by the "superior court," respectively, until such time as the legislature shall make other provision.

Connecticut, Maine, Rhode Island and Vermont do not mention the subject of divorce.

The only instances of originality in the treatment of this subject in state constitutions are to be found in two southern states. Georgia, while not prohibiting divorces, evidently frowns on them. The provisions in her constitution are the following:

"Art. 6, Sec. 15, Pt. 1. No total divorce shall be granted, except on the concurrent verdicts of two juries at different terms of court. Pt. 2. When a divorce is granted, the jury rendering the final verdict shall determine the rights and disabilities of the parties."

"Art. 6, Sec. 16, Pt. 1. Divorce cases shall be brought in the county where the defendant resides, if a resident of this state; if the defendant be not a resident of this state, then in the county in which the plaintiff resides."

South Carolina, however, comes out flat-footed with the prohibition, "Divorces from the bonds of matrimony shall not be allowed in this state."

It should be noted that except in the case of Georgia no distinction is made between divorces *a vinculo* and divorces *a mensa et thoro*. It is plain, however, that the legislatures have no power to grant divorces of either character, except by general law enforceable in the courts. What these legislatures have seen fit to enact on the subject of absolute divorce with right to remarry has been summarized by Bishop William C. Doane in an article in

Public Opinion, March 4, 1905. His statistics include the territories as well as the states. "South Carolina has no divorce law. New York grants a divorce only for adultery. Out of 51 states, adultery is a ground in 50; but, in 24 of these 51, wilful neglect to provide and gross neglect of duty is a cause; in 40, habitual drunkenness; in 43 out of the 51, imprisonment for felony or infamous crime; and in 48 out of the 51, desertion or abandonment."

Since it is now coming to be conceded that a national divorce law, obtainable only through an amendment to the federal constitution, and action by Congress, if not impracticable, is of doubtful desirability, would it not be well to attack this problem through more extensive and uniform provisions in state constitutions concerning marriage and divorce, which shall be obtained through direct appeal to the people of the several states?

[Sections in state constitutions relating to divorce: Alabama, Art. 4, Sec. 104; Arkansas, Art. 5, Sec. 24; California, Art. 4, Sec. 25; Colorado, Art. 5, Sec. 25; Delaware, Art. 2, Sec. 18; Florida, Art. 3, Sec. 20; Georgia, Art. 6, Sec. 15, pts. 1, 2, Art. 6, Sec. 16, pt. 1; Idaho, Art. 3, Sec. 19; Illinois, Art. 4, Sec. 22; Indiana, Art. 4, Sec. 22; Iowa, Art. 3, Sec. 27; Kansas, Art. 2, Sec. 18; Kentucky, Sec. 59; Louisiana, Sec. 48; Maryland, Art. 3, Sec. 33; Massachusetts, Chap. 3, Art. 5; Michigan, Art. 4, Sec. 26; Minnesota, Art. 4, Sec. 28; Mississippi, Art. 4, Sec. 90, Art. 6, Sec. 159; Missouri, Art. 4, Sec. 53; Montana, Art. 5, Sec. 26; Nebraska, Art. 3, Sec. 15; Nevada, Art. 4, Sec. 20; New Hampshire, Art. 75; New Jersey, Art. 4, Sec. 7, No. 1; New York, Art. 1, Sec. 9; North Carolina, Art. 2, Sec. 10; North Dakota, Art. 2, Sec 69; Ohio, Art. 2, Sec. 32; Oregon, Art. 4, Sec. 23; Pennsylvania, Art. 3, Sec. 7; South Carolina, Art. 17, Sec. 3; South Dakota, Art. 3, Sec 23; Tennessee, Art. 11, Sec. 4; Texas, Art. 3, Sec. 56; Utah, Art. 6, Sec. 26; Virginia, Art. 4, Sec. 63; Washington, Art. 2, Sec. 24, Art. 4, Sec. 6; West Virginia, Art. 6, Sec. 39; Wisconsin, Art. 4, Sec. 24; Wyoming, Art. 2, Sec. 27.]